

Notice of Allowability

Application No.

10/612,482

Examiner

Marie R. Yamnitzky

Applicant(s)

LECLOUX ET AL.

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Amendment and Terminal Disclaimer filed April 18, 2007.
2. ☒ The allowed claim(s) is/are 1, 3, 4, 14, 15 and 23 (renumbered as 1-6, respectively).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>05212007</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

Art Unit: 1774

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given via faxed informal communication received May 18, 2007 following a telephone interview with John Lamming on May 17, 2007.

Claims 1 and 15 have been amended as follows:

Claim 1 has been amended as shown on the following two pages. The following two pages contain a copy of currently amended claim 1, received May 18, 2007 via faxed informal communication, which incorporates all the changes discussed during the telephone interview of May 17, 2007.

Claim 15: The period has been moved from the end of line 2 to after the last formula (i.e. after formula $V(ag)$).

The terminal disclaimer filed on April 18, 2007, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application No. 10/612,704, has been reviewed and is accepted. The terminal disclaimer has been recorded. Accordingly, the provisional obviousness-type double patenting rejection set forth in the Office action mailed October 18, 2006 is overcome.

The rejection under 35 U.S.C. 112, 2nd paragraph, as set forth in the Office action mailed October 18, 2006 is overcome by applicant's amendment filed April 18, 2007.

The rejection under 35 U.S.C. 103(a) based on Adachi et al. (*J. Appl. Phys.* 90(10)) in view of Egusa et al. (US 5,294,810) as set forth in the October 18th action is overcome by applicant's amendment.

The rejection under 35 U.S.C. 103(a) based on Li et al. (US 6,723,445 B2) in view of Egusa et al. (US 5,294,810) as set forth in the October 18th action is overcome by applicant's amendment.

The rejection under 35 U.S.C. 103(a) based on Kamatani et al. (US 2002/0135292 A1) in view of Li et al. (US 6,723,445 B2) and Egusa et al. (US 5,294,810) as set forth in the October 18th action is overcome by this examiner's amendment. Kamatani's compounds that were relied upon by the examiner in rejecting the claims were compounds of Formula (V) in which one of the two R⁵ is H. Kamatani's teachings lead away from compounds of Formula (V) wherein neither occurrence of R⁵ is H. (Applicant's arguments filed April 18, 2007 regarding Kamatani's requirement for an isomeric mixture were not persuasive as to patentability because while

Kamatani requires an isomeric mixture, an isomeric mixture is not excluded by the claims.

Further, all isomers in Kamatani's isomeric mixture, as in Kamatani's Example 1, are within the scope of formula (V) as set forth in claim 1 of the April 18th amendment.)

Claim 1 has also been amended by this examiner's amendment to set forth the quinoxaline derivatives of formulae V(aa), V(ab) and V(ac) as alternatives to the quinoxaline derivatives of formula (V) since the derivatives of formulae V(aa), V(ab) and V(ac) are outside the scope of formula (V). This removes a discrepancy between claims 1 and 15 as amended in the April 18th amendment.

Although "H" has been deleted from the definition of R^4 and R^5 , the examiner notes that compounds corresponding to those in which one through four of R^4 is/are H are not excluded from the amended scope of formula (V) because w is defined as an integer from 0 through 4. When w is less than 4, the corresponding position on the benzene ring is hydrogen. Put another way, the definition of R^4 as H is unnecessary since w is defined as an integer from 0 through 4. For example, a compound of formula (V) in which w is 0 is the same as a compound of formula (V) in which w is 4 and each occurrence of R^4 is H.

Claims 1, 3, 4, 14, 15 and 23 are allowed.

Art Unit: 1774

Any inquiry concerning this communication should be directed to Marie R. Yamnitzky at telephone number (571) 272-1531. The examiner works a flexible schedule but can generally be reached at this number from 7:00 a.m. to 3:30 p.m. Monday-Friday.

The current fax number for all official faxes is (571) 273-8300. (Unofficial faxes to be sent directly to examiner Yamnitzky can be sent to (571) 273-1531.)

MRY
May 21, 2007



MARIE YAMNITZKY
PRIMARY EXAMINER

1774